

UNITED STATES COURT OF APPEALS April 14, 2011

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

OSCAR AURELIANO
PENA-VALENCIA,

Defendant - Appellant.

No. 10-4181
(D.C. No. 2:10-CR-00042-DAK-1)

ORDER

Before **LUCERO, TYMKOVICH, and GORSUCH**, Circuit Judges.

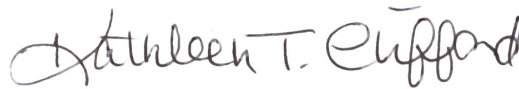
Defendant Oscar Pena-Valencia seeks to appeal the judgment entered by the district court in his criminal case. The government has moved to dismiss because the notice of appeal is untimely.

In a criminal case, a defendant must file a notice of appeal within fourteen days after entry of judgment. *See* Fed. R. App. P. 4(b)(1)(A)(i). In this case, the district court entered judgment on April 9, 2010. The fourteen-day deadline for filing a notice of appeal expired on April 23, 2010. Defendant filed his notice of appeal in the district court on October 18, 2010, which was approximately six months after expiration of the fourteen-day filing deadline.

Although non-compliance with the time limit in Rule 4(b)(1)(A)(i) is not considered jurisdictional, the United States has properly raised the timeliness issue by filing a motion requesting dismissal of the appeal. “[T]he time bar in Rule 4(b) must be enforced by this court when properly invoked by the government.” *United States v. Mitchell*, 518 F.3d 740, 744 (10th Cir. 2008) (quoting *United States v. Garduno*, 506 F.3d 1287, 1290-91 (10th Cir.2007)).

Accordingly, the United States’ motion to dismiss is **GRANTED**. The appeal is **DISMISSED**.

Entered for the Court,
Elisabeth A. Shumaker, Clerk

A handwritten signature in dark ink, reading "Kathleen T. Clifford". The signature is written in a cursive, flowing style with a large initial 'K'.

Kathleen T. Clifford
Attorney - Deputy Clerk